

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DEANNA MOREY, an individual, on
behalf of herself and all others
similarly situated,

Plaintiff,

vs.

LOUIS VUITTON NORTH
AMERICA, INC., a Delaware
corporation,

Defendants.

CASE NO. 11cv1517 WQH
(BLM)

ORDER

HAYES, Judge:

The matter before the Court is the Unopposed Motion for Preliminary Approval of Class Action Settlement filed by Plaintiff Deanna Morey. (ECF No. 62).

BACKGROUND

On May 20, 2011, Plaintiff Deanna Morey, on behalf of herself and all others similarly situated, initiated this action by filing a class action Complaint against Defendant Louis Vuitton North America, Inc. in the Superior Court of California, County of San Diego. (ECF No. 1-1 at 5-12). Plaintiff alleged that Defendant violated California's Song-Beverly Credit Card Act, Cal. Civ. Code § 1747.08, by requesting and recording shoppers' personal identification information when they used a credit

1 card for purchases at Louis Vuitton retail stores.¹ On July 8, 2011, Plaintiff removed
2 the action to this Court.

3 On July 11, 2011, the Honorable M. James Lorenz sua sponte remanded the
4 action to the state court, finding that the amount in controversy did not exceed
5 \$5,000,000 – the amount required for original jurisdiction to vest with this Court
6 pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. section
7 1332(d). (ECF No. 3). Defendant filed a Motion for Reconsideration (ECF No. 4),
8 which the Court denied (ECF No. 7).

9 On July 21, 2011, Defendant initiated an appeal to the Court of Appeals for the
10 Ninth Circuit from the Court’s July 11, 2011 Order. (ECF No. 9). On January 10,
11 2012, the Ninth Circuit reversed, holding that the Court erred in finding that the amount
12 in controversy requirement under CAFA had not been satisfied. (ECF No. 16).

13 On February 10, 2012, Defendant filed an Answer to the Complaint. (ECF No.
14 20). On February 17, 2012, the Magistrate Judge issued a Rule 26 scheduling Order
15 (ECF No. 21), and discovery commenced.

16 On August 17, 2012, Plaintiff filed the First Amended Class Action Complaint
17 – the operative pleading in this case – in which Plaintiff alleges:

18 Defendant operates retail stores throughout the United States, including
19 California. Defendant was, and is, engaged in a pattern of unlawful
20 business practices whereby it utilizes a customer information capture card
which contained preprinted spaces for credit card customers to write their
respective: (i) name; (ii) email address; (iii) address (including ZIP code);

21 ¹The Song-Beverly Credit Card Act provides:

22 [N]o person, firm, partnership, association, or corporation
23 that accepts credit cards for the transaction of business shall do
24 any of the following: ...

25 Request, or require as a condition to accepting the credit
26 card as payment in full or in part for goods or services, the
27 cardholder to provide personal identification information, which
the person, firm, partnership, association, or corporation accepting
the credit card writes, causes to be written, or otherwise records
upon the credit card transaction form or otherwise....

28 Cal. Civ. Code § 1747.08.

(iv) birth date; (iv) home telephone number; and (v) mobile telephone number. It was, and is, Defendant's policy and practice to request credit card customers to write their respective personal identification information upon the customer information capture card in the form of their: (i) names; (ii) email addresses; (iii) addresses; (iv) birth dates; (iv) home telephone number; and (v) mobile telephone number, and to subsequently enter such information into its electronic customer database at the point-of-sale. Defendant's acts and practices as herein alleged were at all times intentional.

(First Amended Class Action Complaint ¶ 2, ECF No. 32 at 2). Plaintiff proposes to prosecute this action on behalf of “all persons from whom Defendant collected personal identification information in conjunction with a credit card purchase transaction at a California retail store during the period of time beginning May 23, 2010 and continuing through the date of trial...” *Id.* ¶ 21.

On August 31, 2012, Defendant filed a Motion to Dismiss. (ECF No. 33). On September 28, 2012, Plaintiff filed a Motion for Class Certification. (ECF No. 37). The parties filed opposition and reply briefs to each motion. (ECF Nos. 36, 42, 50, 51).

On October 2, 2012, Judge Lorenz recused from this case and Judge Hayes was randomly assigned. (ECF No. 40).

On February 13, 2013, after several settlement and case management conferences, the Magistrate Judge issued an Order indicating that the parties had reached a tentative settlement. (ECF No. 56).

On February 29, 2013, Plaintiff filed the Unopposed Motion for Preliminary Approval of Class Action Settlement, accompanied by the declaration of Plaintiff's counsel, Gene J. Stonebarger, and several exhibits.² (ECF No. 62). Plaintiff moves the Court for an order: “(1) preliminarily approving the Settlement Agreement as being fair, reasonable, and adequate; (2) provisionally certifying the Class under Federal Rule of Civil Procedure 23 for settlement purposes only; (3) preliminarily approving the form,

²Plaintiff submits the following exhibits: (1) Settlement Agreement and Release (Exh. 1); (2) proposed Long Form Class Notice (Exh. 1-A); (3) proposed Summary Email Class Notice (Exh. 1-B); (4) proposed Summary Postcard Class Notice (Exh. 1-C); (5) proposed Publication Notice (Exh. 1-D); (6) proposed Claim Form (Exh. 1-E); and (7) Firm Resumes of Stonebarger Law, APC and Patterson Law Group, APC (Exhs. 2-3).

1 manner, and content of the Class Notices and Claim Form; (4) appointing Plaintiff as
2 the Class Representative; (5) appointing the law firms of Stonebarger Law, APC and
3 Patterson Law Group, APC as counsel for the Class; and (6) setting the date and time
4 of the Fairness Hearing.” (ECF No. 62-1 at 8-9).

5 On April 25, 2013, Defendant filed a Notice of Service of CAFA Notice of
6 Proposed Settlement.

7 **TERMS OF PROPOSED SETTLEMENT**

8 The proposed settlement class (the “Class”) consists of “all persons who made
9 a credit card purchase at a [Louis Vuitton] store in California during the period from
10 May 20, 2010 to January 28, 2013 and who were requested to and did provide personal
11 identification information, excluding transactions where such personal identification
12 information was collected for shipping, delivery, servicing or repairing of the purchased
13 merchandise or for special orders or paid holds.” (ECF No. 62-1 at 24).

14 **I. Class Benefits**

15 “[Defendant] will establish a Merchandise Certificate Fund of \$1 million within
16 fifteen (15) days after the Judgment becomes Final, which is forty-five (45) days after
17 the Court enters the Final Approval Order and Judgment (‘Effective Date’). All Class
18 members who timely submit a valid claim form will be emailed or mailed a
19 Merchandise Certificate within sixty (60) days after the Effective Date. The amount of
20 each Merchandise Certificate will be determined by the number of qualifying claims
21 approved by the Settlement Administrator. The actual amount of each Merchandise
22 Certificate will be \$1 million divided by the total number of qualifying claims rounded
23 down to the nearest whole dollar. The Merchandise Certificates will be good for all
24 purchases at stand-alone Louis Vuitton retail stores in California, may not be combined,
25 are fully transferable, and have a one-year expiration on use. The Merchandise
26 Certificates cannot be redeemed at leased store locations within department stores.”
27 (ECF No. 62-1 at 10 (citing Exh. 1, Settlement Agreement, § III(C))).

28 **II. Completing Claim Forms**

1 “Class members will have ninety (90) days after the Court enters its order
2 granting Preliminary Approval of the Settlement (‘Claim Deadline’) to complete in full
3 and return to the Settlement Administrator a timely Claim Form (substantially in the
4 form of Exhibit E to the Settlement Agreement) to receive a Merchandise Certificate.
5 Class members may submit a claim form electronically through the Settlement Website
6 or by mail. To make an initial claim, Class members do not need to provide any proof
7 of purchase, nor do they need to submit any documentation other than or in addition to
8 the claim form itself. Timeliness of a Claim Form will be determined by the date
9 postmarked by the postal service or other expedited delivery service, or, if submitted
10 electronically through the Settlement Website, the date the Settlement Administrator
11 receives the Claim Form, as evidenced by the transmission receipt.” *Id.* at 10-11 (citing
12 Exh. 1, Settlement Agreement, §§ III(C) and III(G)(3)).

13 **III. Class Notice**

14 The Notice of Class Action Settlement will be provided through the following
15 methods:

16 **A. Email or Direct Mail Notice**

17 “Within thirty (30) days after the Court enters its order granting Preliminary
18 Approval of the Settlement, the Settlement Administrator will email the Summary
19 Email Class Notice (substantially in the form attached as Exhibit B to the Settlement
20 Agreement), or if no email address is available, mail, the Summary Postcard Class
21 Notice (substantially in the form attached as Exhibit C to the Settlement Agreement) to
22 all Class Members for whom [Defendant] has an email address or residential address.
23 After mailing the Summary Postcard Class Notice, the Settlement Administrator will
24 conduct a National Change of Address search for each Class member whose Summary
25 Postcard Class Notice is returned as not deliverable.” *Id.* at 11 (citing Exh. 1,
26 Settlement Agreement, § III(G)(2)(a)).

27 **B. Publication Notice**

28 “[Defendant] will publish the Publication Notice (substantially in the form

1 attached as Exhibit D to the Settlement Agreement) in the California edition of USA
2 today two (2) times during the sixty (60) day period after the Court enters its order
3 granting Preliminary Approval of the Settlement.” *Id.* (citing Exh. 1, Settlement
4 Agreement § III(G)(2)(c)).

5 **C. Settlement Website**

6 “Within twenty-one (21) days after the Court enters its order granting Preliminary
7 Approval of the Settlement, [Defendant] will cause a Settlement Website to be set up.
8 The Settlement Website will be active until the Effective Date and will contain
9 information relating to the Settlement, including the Long Form Class Notice
10 (substantially in the form attached as Exhibit A to the Settlement Agreement) and a
11 Claim Form for Class members to submit electronically.” *Id.* at 12 (citing Exh. 1,
12 Settlement Agreement § III(F)).

13 **IV. Right to Elect Not to Participate in Settlement**

14 “Class members who wish to exclude themselves from the Settlement must mail
15 to the Settlement Administrator, not later than ninety (90) days after the Court enters
16 its order granting Preliminary Approval of the Settlement, a signed and notarized
17 Election Not to Participate in Settlement. A Class member who does not complete and
18 mail a timely Election Not to Participate in Settlement in the manner and by the
19 deadline specified in the Settlement Agreement will be bound by all terms and
20 conditions of the Settlement, if the Settlement is approved by the Court, and by the
21 Judgment, regardless of whether he or she has objected to the Settlement.” *Id.* (citing
22 Exh. 1, Settlement Agreement § III(G)(4)(b)).

23 **V. Right to Object**

24 “Class members who wish to object to the Settlement must file with the Court
25 and serve on counsel for the Parties, not later than ninety (90) days after the Court
26 enters its order granting Preliminary Approval of the Settlement Administrator, a
27 written objection to (i) the Settlement, and/or (ii) Plaintiff and Class Counsel's request
28 for attorneys' fees, costs and incentive award. Class members who fail to file and serve

1 timely written objections will be deemed to have waived any objections and will be
2 foreclosed from making any objection (whether by appeal or otherwise) to the
3 Settlement.” *Id.* (citing Exh. 1, Settlement Agreement § III(G)(4)(a)).

4 **VI. Incentive Award to Class Representative**

5 “[I]n the event this Settlement Agreement receives Final Judicial Approval,
6 [Defendant] will pay, within fifteen (15) days after the Effective Date, an incentive
7 award of \$5,000.00 to the Class Representative.” *Id.* at 13 (citing Exh. 1, Settlement
8 Agreement § III(E)).

9 **VII. Attorneys’ Fees and Costs**

10 “[I]n the event the Parties’ Settlement Agreement receives Final Judicial
11 Approval and these attorneys’ fees and costs amounts are approved by this Court,
12 [Defendant] will pay, within fifteen (15) days after the Effective Date, Class Counsel’s
13 attorneys’ fees and costs in the amount of \$375,000.00 separate and apart from any
14 benefits to the Class....” *Id.* (citing Exh. 1, Settlement Agreement § III(D)). “Plaintiffs
15 Motion for attorneys’ fees will be filed prior to the objection deadline.” *Id.* at 14 (citing
16 *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010)).

17 **VIII. Settlement Implementation Costs**

18 “[Defendant] will bear all costs of providing Class Notice in the manner set forth
19 in the Settlement Agreement and all costs associated with the administration of the
20 Settlement.” *Id.* (citing Settlement Agreement § III(F)).

21 **DISCUSSION**

22 “Voluntary conciliation and settlement are the preferred means of dispute
23 resolution in complex class action litigation.” *Smith v. CRST Van Expedited, Inc.*, 2013
24 WL 163293, at *2 (S.D. Cal. Jan. 14, 2013) (citing *Officers for Justice v. Civil Service*
25 *Com’n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)). But
26 because “[t]he class action device ... is [] susceptible to abuse and carries with it certain
27 inherent structural risks, ... class actions may be settled only with the approval of the
28 district court.” *Officers for Justice*, 688 F.2d at 623; *see also* Fed. R. Civ. P. 23(e). “The

1 primary concern ... is the protection of those class members ... whose rights may not
 2 have been given due regard by the negotiating parties.” *Id.* at 624. “Once the named
 3 parties reach a settlement in a purported class action, they are always solidly in favor
 4 of their own proposal. There is no advocate to critique the proposal on behalf of absent
 5 class members.” *Kakani v. Oracle Corp.*, 2007 WL 1793774, at *1 (N.D. Cal. June 19,
 6 2007) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 959-60 (9th Cir. 2003)). Given these
 7 risks and concerns, “[a]pproval ... involves a two-step process in which the Court first
 8 determines whether a proposed class action settlement deserves preliminary approval
 9 and then, after notice is given to class members, whether final approval is warranted.”
 10 *National Rural Telecommunications Cooperative v. DIRECTTV, Inc.*, 221 F.R.D. 523,
 11 525 (C.D. Cal. 2004).

12 In this case, the Court is at the first step – preliminary approval. This “initial
 13 decision to approve or reject a settlement proposal is committed to the sound discretion
 14 of the trial judge.” *Officers for Justice*, 688 F.2d at 625. “Because class members will
 15 subsequently receive notice and have an opportunity to be heard on the settlement, th[e]
 16 Court need not review the settlement in detail at this juncture.” *In re M.L. Stern*
 17 *Overtime Litig.*, 2009 WL 995864, at *3 (S.D. Cal. April 13, 2009). However, even at
 18 this preliminary stage, “a district court may not simply rubber stamp stipulated
 19 settlements.” *Kakani*, 2007 WL 1793774, at *1. “Where ... class counsel negotiates a
 20 settlement agreement before the class is even certified,” – as is the case here – “courts
 21 must be particularly vigilant not only for explicit collusion, but also for more subtle
 22 signs that class counsel have allowed pursuit of their own self-interests and that of
 23 certain class members to infect the negotiations.” *Dennis v. Kellogg*, 697 F.3d 858, 864
 24 (9th Cir. 2012) (internal quotation omitted). In order to grant preliminary approval, the
 25 Court must “ratify both the propriety of [] certification and the fairness of the
 26 settlement.” *Staton*, 327 F.3d at 952.

27 //

28 **I. Propriety of Certification**

1 Plaintiff seeks certification of a settlement class under Federal Rule of Civil
2 Procedure 23(b)(3). “To obtain certification of a class action ... under Rule 23(b)(3),
3 a plaintiff must satisfy Rule 23(a)’s [] prerequisites of numerosity, commonality,
4 typicality, and adequacy of representation, and must also establish that the questions of
5 law or fact common to class members predominate over any questions affecting only
6 individual members, and that a class action is superior to other available methods for
7 fairly and efficiently adjudicating the controversy.” *Amgen Inc. v. Connecticut*
8 *Retirement Plans and Trust Funds*, __ U.S. __, 133 S. Ct. 1184, 1191 (2013) (internal
9 citations omitted).

10 **A. Numerosity**

11 First, a proposed class must be “so numerous that joinder of all members is
12 impracticable.” Fed. R. Civ. P. 23(a). “Joinder need not be impossible, as long as
13 potential class members would suffer a strong litigation hardship or inconvenience if
14 joinder were required.” *Rannis v. Recchia*, 380 Fed. Appx. 646, 651 (9th Cir. May 27,
15 2010) (citing *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th
16 Cir. 1964)).

17 The number of putative class members in this action is “approximately 343,427.”
18 (04/25/2013 Notice of Service of CAFA Notice of Proposed Settlement, ECF No. 63
19 at 2). Accordingly, the Court finds that “potential class members would suffer a strong
20 litigation hardship or inconvenience if joinder were required.” *Rannis*, 380 Fed. Appx.
21 at 651. The numerosity prerequisite has been preliminarily satisfied.

22 **B. Commonality**

23 The second Rule 23(a) prerequisite is commonality of class members.
24 “Commonality requires the plaintiff to demonstrate that the class members have
25 suffered the same injury.” *Wal-Mart Stores, Inc. v. Dukes*, __ U.S. __, 131 S. Ct. 2541,
26 2551 (2011) (internal quotation omitted). For the reasons stated in the Rule 23(b)(3)
27 predominance analysis, discussed below, the Court finds that the commonality
28 prerequisite has been preliminarily satisfied. *See Yeoman v. Ikea U.S. W., Inc.*,

1 11CV701 WQH BGS, 2012 WL 1598051 (S.D. Cal. May 4, 2012) (“Defendant makes
2 similar arguments under Rule 23(a)(2) regarding commonality and Rule 23(b)(3)
3 regarding predominance. Given the permissive construction of Rule 23(a)(2), the Court
4 presumes that Rule 23(a)(2)’s commonality requirement has been satisfied.”).

5 **C. Typicality**

6 The third Rule 23(a) prerequisite is typicality of claims. “The typicality
7 prerequisite ... is fulfilled if ‘the claims or defenses of the representative parties are
8 typical of the claims or defenses of the class.’” *Hanlon v. Chrysler Corp.*, 150 F.3d
9 1011, 1020 (9th Cir. 1998) (quoting Fed. R. Civ. P. 23(a)(3)). “Under the rule’s
10 permissive standards, representative claims are ‘typical’ if they are reasonably co-
11 extensive with those of absent class members; they need not be substantially identical.”
12 *Id.*

13 Plaintiff alleges that she “purchased merchandise at one of Defendant’s stores
14 located in California with a credit card and had her personal identification information
15 collected by Defendant in conjunction with the credit card transaction,” in violation of
16 the Song-Beverly Credit Card Act. (ECF No. 32 at 3). Likewise, the proposed
17 settlement class is composed of individuals who “made a credit card purchase at a
18 [Louis Vuitton] store in California during the period from May 20, 2010 to January 28,
19 2013” and were “requested to and did provide personal identification information....”
20 (ECF No. 62-1 at 24). Plaintiff brings no claim unique to herself. Accordingly, the
21 Court finds that the typicality prerequisite has been preliminarily satisfied.

22 **D. Adequacy**

23 The final Rule 23(a) prerequisite is “that ‘the representative parties will fairly and
24 adequately protect the interests of the class.’” *Hanlon*, 150 F.3d at 1020 (quoting Fed.
25 R. Civ. P. 23(a)(4)). “Resolution of two questions determines legal adequacy: (1) do
26 the named plaintiffs and their counsel have any conflicts of interest with other class
27 members and (2) will the named plaintiffs and their counsel prosecute the action
28 vigorously on behalf of the class?” *Id.* Counsel for Plaintiff has experience prosecuting

1 consumer class actions. *See* Stonebarger Decl. ¶ 10, ECF No. 62-2 at 4. Based upon
2 this record, the Court finds no indication that Plaintiff or her counsel have any conflict
3 of interest with any other class member. The Court finds that the adequacy prerequisite
4 has been preliminarily satisfied.

5 **E. Predominance and Superiority**

6 Having satisfied the Rule 23(a) prerequisites, Plaintiff must next demonstrate that
7 (1) “the questions of law or fact common to class members predominate over any
8 questions affecting only individual members,” and (2) “a class action is superior to
9 other available methods for fairly and efficiently adjudicating the controversy.” Fed.
10 R. Civ. P. 23(b)(3). In her Unopposed Motion for Preliminary Class Settlement,
11 Plaintiff contends that the predominance requirement is satisfied in this case because
12 “Class members are entitled to the same legal remedies based on the same alleged
13 wrongdoing: exposure to the same alleged policy.” (ECF No. 62-1 at 25).

14 The predominance inquiry concerns whether “questions of law or fact common
15 to the class will predominate over any questions affecting only individual members as
16 the litigation progresses.” *Amgen*, 133 S. Ct. at 1195. “When common questions
17 present a significant aspect of the case and they can be resolved for all members of the
18 class in a single adjudication, there is clear justification for handling the dispute on a
19 representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022.

20 In this case, the First Amended Class Action alleges that Defendant had a “policy
21 and practice to request credit card customers to write their respective personal
22 identification information upon [a] customer information capture card ... and to
23 subsequently enter such information into its electronic customer database at the
24 point-of-sale.” (First Amended Class Action Complaint ¶ 2, ECF No. 32 at 2). Each
25 class member contends that he or she “made a credit card purchase at a [Louis Vuitton]
26 store in California during the period from May 20, 2010 to January 28, 2013” and was
27 “requested to and did provide personal identification information....” (ECF No. 62-1
28 at 24). The central question in this case is whether Defendant’s policy of requesting

1 personal identification information violated the Song-Beverly Credit Card Act. This
 2 question is common to the class, and it is one that can be answered with common
 3 evidence. *Yeoman v. Ikea U.S. W., Inc.*, 11CV701 WQH BGS, 2012 WL 1598051, *13
 4 (S.D. Cal. May 4, 2012) (“Plaintiff has shown that common questions of law and fact
 5 predominate over other issues in this case on the grounds that Ikea’s uniform policy and
 6 practice of requesting personal identification information from customers during credit
 7 card transactions can be evaluated to determine if the Song-Beverly Credit Card Act
 8 was violated.”); *see also Yeoman v. Ikea U.S. W., Inc.*, 11CV701 WQH BGS, 2012 WL
 9 1598051 (S.D. Cal. Feb. 27, 2013) (“A court applies an objective test to determine
 10 whether a retailer’s request for personal identification information would be perceived
 11 as a condition of credit card payment.”). The Court finds that the Rule 23(b)(3)
 12 predominance requirement has been preliminarily established.

13 Next, the Court must consider whether “a class action [would be] ‘superior to
 14 other available methods for fairly and efficiently adjudicating the controversy.’” *Wolin*
 15 *v. Jaguar Land Rover North America, LLC*, 619 F.3d 1168, 1175 (9th Cir. 2010)
 16 (quoting Fed. R. Civ. P. 23(b)(3)). In making this determination, the court should
 17 include:

18 (A) the class members’ interests in individually controlling the prosecution
 19 or defense of separate actions;

20 (B) the extent and nature of any litigation concerning the controversy
 21 already begun by or against class members;

22 (C) the desirability or undesirability of concentrating the litigation of the
 23 claims in the particular forum; and

24 (D) the likely difficulties in managing a class action.

25 Fed. R. Civ. P. 23 (b)(3). “[C]onsideration of these factors requires the court to focus
 26 on the efficiency and economy elements of the class action so that cases allowed under
 27 subdivision (b)(3) are those that can be adjudicated most profitably on a representative
 28 basis.” *Zinser v. Accujix Research Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001).

In this case, the small amount of money at stake and the expenses associated with
 bringing an individual case makes it highly unlikely that individual litigation would be

1 undertaken. A class action would offer those with small claims the opportunity for
2 meaningful redress. *See id.* at 1190 (interest of each class member in prosecuting an
3 individual action is minimal “[w]here damages suffered by each putative class member
4 are not large...”). The Court is unaware of any other litigation involving the same
5 controversy. The Court finds it desirable to concentrate the litigation in this forum, and
6 unlikely that there will be difficulties in managing this class action. *See Hanlon*, 150
7 F.3d at 1019 (“When common questions present a significant aspect of the case and
8 they can be resolved for all members of the class in a single adjudication, there is clear
9 justification for handling the dispute on a representative rather than on an individual
10 basis.”). The Court finds that the Rule 23(b)(3) superiority requirement has been
11 preliminarily established.

12 The Court grants preliminary certification of the proposed settlement class.

13 **III. Fairness of the Proposed Settlement**

14 Next, the Court must “review[] the substance of the settlement ... to ensure that
15 it is ‘fair, adequate, and free of collusion.’” *Lane v. Facebook*, 696 F.3d 811, 819 (9th
16 Cir. 2012) (citing *Hanlon*, 150 F.3d at 1026). “In making this appraisal, courts have
17 ‘broad discretion’ to consider a range of factors such as ‘the strength of the plaintiffs’
18 case; the risk, expense, complexity, and likely duration of further litigation; the risk of
19 maintaining class action status throughout the trial; the amount offered in settlement;
20 the extent of discovery completed and the stage of the proceedings; the experience and
21 views of counsel; the presence of a governmental participant; and the reaction of the
22 class members to the proposed settlement.” *Smith*, 2013 WL 163293, at *2. “The
23 relative importance to be attached to any factor will depend upon and be dictated by the
24 nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and
25 circumstances presented by each individual case.” *Officers for Justice*, 688 F.2d at 625.

26
27 “But because the Court cannot fully assess many of these factors prior to notice
28 and an opportunity for objection, the Court need not conduct a full settlement fairness

1 appraisal before granting preliminary approval; rather, the proposed settlement need
2 only fall within ‘the range of possible approval.’” *Dennis v. Kellogg Co.*,
3 09-CV-1786-IEG WMC, 2013 WL 1883071, *4 (S.D. Cal. May 3, 2013) (quoting
4 *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008)). “Essentially, the court
5 is only concerned with whether the proposed settlement discloses grounds to doubt its
6 fairness or other obvious deficiencies such as unduly preferential treatment of class
7 representatives or segments of the class, or excessive compensation of attorneys.”
8 *Alberto*, 252 F.R.D. at 666.

9 In this case, Plaintiff’s counsel has demonstrated that the procedure for reaching
10 this settlement was fair and reasonable and that the settlement was the product of
11 arms-length negotiations. *See* Stonebarger Decl. ¶¶ 2-5, ECF No. 62-2 at 2. A
12 significant amount of litigation and discovery has been undertaken in prosecuting this
13 action, *see id.* ¶ 6, and Plaintiff’s counsel has demonstrated that further litigation would
14 bring additional risk and expense to the class. *See id.* ¶¶ 3, 5. While these factors
15 weigh in favor of granting preliminary approval, the Court has concerns about the use
16 of “Merchandise Certificates” (i.e., “vouchers” or “coupons”) in the settlement award.
17 Under the terms of the Settlement Agreement, a Merchandise Certificate can only be
18 used towards a future purchase of Louis Vuitton goods at a Louis Vuitton retail store.

19 The CAFA includes an express requirement that “the court may approve the
20 proposed [coupon] settlement only after hearing to determine whether, and making a
21 written finding that, the settlement is fair, reasonable, and adequate for class members.”
22 28 U.S.C. § 1712(e). Although this “fair, reasonable, and adequate” standard is identical
23 to that contained in Rule 23(e)(2), “several courts have interpreted section 1712(e) as
24 imposing a heightened level of scrutiny in reviewing such coupon settlements.” *True*
25 *v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1069 (C.D. Cal. 2010) (collecting
26 cases); *see also* S. Rep. No. 109–14, at 27 (2005), reprinted in 2005 U.S.C.C.A.N. 3,
27 27 (stating that Section 5 of CAFA “requires greater scrutiny of coupon settlements”).
28 Likewise, the Federal Rules of Civil Procedure instruct the court that “[s]ettlements

1 involving nonmonetary provisions for class members deserve careful scrutiny to ensure
2 that these provisions have actual value to the class.” See Fed. R. Civ. P. 23(h), 2003
3 Advisory Committee Notes. “Accordingly, *before granting final approval*, the court
4 ‘must discern if the value of a specific coupon settlement is reasonable in relation to the
5 value of the claims surrendered.’” *In re EasySaver Rewards Litig.*, 921 F. Supp. 2d
6 1040 (S.D. Cal. 2013) (emphasis added) (quoting *True*, 749 F. Supp. 2d at 1069); *Sobel*
7 *v. Hertz Corp.*, 3:06-CV-00545-LRH, 2011 WL 2559565 (D. Nev. June 27, 2011)
8 (same).

9 In light of the other factors weighing in favor of preliminary approval, the Court
10 finds that the settlement falls within the range of possible approval. See *In re General*
11 *Motors Corp.*, 55 F.3d at 784 (noting the standard is whether the settlement “falls
12 within the range of possible approval”); see also *Young v. Polo Retail, LLC*, No. C-02-
13 4546 VRW, 2006 WL 3050861, at *5 (granting preliminary approval in settlement
14 involving vouchers, but “anticipat[ing] redressing this issue at the final approval
15 hearing”). “The fact that a proposed settlement may only amount to a fraction of the
16 potential recovery does not, in and of itself, mean that the proposed settlement is grossly
17 inadequate and should be disapproved.” *Linney v. Cellular Alaska P’ship*, 151 F.3d
18 1234, 1242 (9th Cir. 1998) (quotation omitted).

19 The Court grants preliminary approval of class settlement. In the final approval
20 briefing, the parties shall fully address the Court’s concerns regarding the actual value
21 of the Merchandise Certificates and the impact of the Merchandise Certificates on the
22 attorneys’ fee award. The parties shall also be prepared to discuss these issues at the
23 fairness hearing. See *In re EasySaver Rewards Litig.*, 921 F. Supp. 2d at 1040
24 (“[B]efore granting final approval, the court must discern if the value of a specific
25 coupon settlement is reasonable in relation to the value of the claims surrendered.”
26 (quotation omitted)); see also 28 U.S.C. § 1712(a) (“If a proposed settlement in a class
27 action provides for a recovery of coupons to a class member, the portion of any
28 attorney’s fee award to class counsel that is attributable to the award of the coupons

1 shall be based on the value to class members of the coupons that are redeemed.”).

2 **IV. Notice**

3 Plaintiff has provided the proposed Long Form Class Notice, Summary Email
4 Class Notice, Summary Postcard Class Notice, Publication Notice and Claim Form (Pl.
5 Exhs. 1-B, 1-C, 1-D, 1-E, ECF No. 62-3 at 22-39), which are satisfactory to the Court
6 in all respects except one.

7 The Settlement Administrator shall make available an electronic copy of this
8 preliminary approval Order in a prominent location on the Settlement Website. The
9 Settlement Administrator shall include a statement, in a prominent location on the Long
10 Form Class Notice, Summary Email Class Notice, Summary Postcard Class Notice,
11 Publication Notice and Claim Form, informing putative class members that a copy of
12 this Order is available on the Settlement Website.

13 In all other respects, the Court finds that the Notices are reasonably calculated to
14 adequately apprise Class Members of (a) the pending lawsuit, (b) the proposed
15 settlement, and (c) their rights, including the right to either participate in the settlement,
16 exclude themselves from the settlement, or object to the settlement.

17 **CONCLUSION**

18 IT IS HEREBY ORDERED that the Unopposed Motion for Preliminary
19 Approval of Class Action Settlement (ECF No. 62) filed by Plaintiff Deanna Morey is
20 GRANTED in part, as follows:

- 21 1. The Settlement Agreement (Pl. Exh. 1, ECF No. 62-3 at 1-20), including the
22 Long Form Class Notice, Summary Email Class Notice, Summary Postcard Class
23 Notice, Publication Notice and Claim Form, attached to the Settlement
24 Agreement as Exhibits A through E (*Id.* at 21-39), are preliminarily approved;
- 25 2. The Class is provisionally certified as a class of all persons who made a credit
26 card purchase at a Louis Vuitton store in California during the period from May
27 20, 2010 to January 28, 2013 and who were requested to and did provide
28 personal identification information, excluding transactions where such personal

1 identification information was collected for a special purpose incidental but
2 related to the individual credit card transaction, including but not limited to
3 information relating to shipping, delivery, servicing or repairing of the purchased
4 merchandise or for special orders or paid holds (“Class Members”);

5 3. Defendant Louis Vuitton North America, Inc. will notify Class Members of the
6 settlement in the manner specified under Section III(G)(2) of the Settlement
7 Agreement. Defendant will pay all costs associated with claims administration
8 and providing notice to Class Members. No later than seven (7) calendar days
9 before the filing date of Plaintiff’s application or motion in support of the Final
10 Approval Order and Judgment, Defendant is to provide Plaintiff with a
11 declaration or declarations from the Settlement Administrator confirming that the
12 notice has been provided in accordance with paragraph 3.3 of the Settlement
13 Agreement;

14 4. The Settlement Administrator shall make available an electronic copy of this
15 preliminary approval Order in a prominent location on the Settlement Website.
16 The Settlement Administrator shall include a statement, in a prominent location
17 on the Long Form Class Notice, Summary Email Class Notice, Summary
18 Postcard Class Notice, Publication Notice and Claim Form, informing putative
19 class members that a copy of this Order is available on the Settlement Website.

20 5. Class Members who want to receive a Merchandise Certificate under the
21 Settlement Agreement must accurately and completely fill out a Claim Form and
22 submit it to the Claims Administrator electronically or by U.S. mail within ninety
23 (90) calendar days from the date of this Order. Timeliness of a Claim Form shall
24 be determined by the date postmarked by the postal service or other expedited
25 delivery service, or, if submitted electronically through the Settlement Website,
26 the date the Settlement Administrator receives the Claim Form, as evidenced by
27 the transmission receipt;


28 6. Class Members who have not submitted a timely written exclusion request

1 pursuant to paragraph 8 below and who want to object to the Settlement
2 Agreement must file a written objection and/or a Notice of Intention to Appear
3 with the Court, and serve copies on Class Counsel and Defendant's Counsel no
4 later than ninety (90) calendar days after the date of this Order. The Objection
5 must state: (a) the name of the Action, "*Morey v. Louis Vuitton North America,*
6 *Inc.*, S.D. Cal. Case No. 3:11-cv-01517-WQH-BLM"; (b) the full name, address,
7 and telephone number of the person objecting, (c) a statement that the person is
8 a Class Member; (d) the words "Notice of Objection" or "Formal Objection"; (e)
9 in clear and concise terms, the legal and factual arguments supporting the
10 objection; and (f) whether the person intends to appear to speak at the Fairness
11 Hearing. If the objection is presented through an attorney, the written objection
12 must also include: (a) the identity and number of Class Members represented by
13 objector's counsel; (b) the number of such represented Class Members who have
14 opted out of the Settlement; and (c) the number of such represented Class
15 Members who have remained in the Settlement and have not objected. The
16 objection will not be valid if it only objects to the lawsuit's appropriateness or
17 merits. Any Class Member who files and serves a written objection, as described
18 in this Paragraph, may appear at the Fairness Hearing, either in person or through
19 personal counsel hired at the Class Member's expense, to object to the fairness,
20 reasonableness, or adequacy of the Settlement Agreement or the proposed
21 Settlement, or to the award of Attorneys' Fees. Class Members, or their
22 attorneys, intending to make an appearance at the Fairness Hearing, must deliver
23 to Class Counsel and Defendants' Counsel, and file with the Court, no later than
24 ninety (90) calendar days after the date of this Order, a Notice of Intention to
25 Appear. Only Class Members who file and serve timely Notices of Intention to
26 Appear may speak at the Fairness Hearing. Class Members who fail to make
27 objections in this manner will be deemed to have waived any objections and will
28 be foreclosed from making any objections (whether by a subsequent objection,

- 1 intervention, appeal, or any other process) to the Settlement Agreement;
- 2 7. Class Members who fail to object to the Settlement Agreement in the manner
- 3 specified above will: (a) be deemed to have waived their right to object to the
- 4 Settlement Agreement; (b) be foreclosed from objecting (whether by a
- 5 subsequent objection, intervention, appeal, or any other process) to the
- 6 Settlement Agreement; and (c) not be entitled to speak at the Fairness Hearing;
- 7 8. Class Members who want to be excluded from the settlement must send a letter
- 8 or postcard to the Claims Administrator stating: (a) the name and case number
- 9 of the Action, “*Morey v. Louis Vuitton North America, Inc.*, S.D. Cal. Case No.
- 10 3:11-cv-01517-WQH-BLM”; (b) the full name, address, and telephone number
- 11 of the person requesting exclusion; and (c) a statement that the person is a Class
- 12 Member and wishes to be excluded from the Class, postmarked no later than
- 13 ninety (90) calendar days after the date of this order. Defendant is to provide
- 14 Plaintiff with a list of Class Members, prepared by the Settlement Administrator,
- 15 who have timely and validly excluded themselves from the Class no later than
- 16 fourteen (14) days after the deadline for submission of Elections Not to
- 17 Participate in Settlement;
- 18 9. Plaintiff is conditionally certified as the Class Representative to implement the
- 19 Parties’ settlement in accordance with the Settlement Agreement. Stonebarger
- 20 Law, APC and Patterson Law Group, APC are appointed as Class Counsel.
- 21 Plaintiff and Class Counsel must fairly and adequately protect the Class’s
- 22 interests;
- 23 10. If the Settlement Agreement terminates for any reason, the following will occur:
- 24 (a) Class certification will be automatically vacated; (b) Plaintiff will revert to
- 25 functioning as a putative class representative as if no class had been certified; and
- 26 (c) this Action will revert to its previous status in all respects as it existed
- 27 immediately before the Parties executed the Settlement Agreement. This Order
- 28 will not waive or otherwise impact the Parties’ rights or arguments;

- 1 11. Nothing in this Order is, or may be construed as, an admission or concession on
2 any point of fact or law by or against any Party;
- 3 12. All discovery and pretrial proceedings and deadlines are stayed and suspended
4 until further notice from the Court, except for such actions as are necessary to
5 implement the Settlement Agreement and this Order;
- 6 13. **On December 12, 2013 at 3:30 P.M. in Courtroom 14B**, this Court will hold
7 a Fairness Hearing to determine whether the Settlement Agreement should be
8 finally approved as fair, reasonable, and adequate. Class Counsel's attorneys' fee
9 application must be filed fourteen (14) calendar days before the deadline for
10 Class Members to object to the settlement. All papers supporting Final Approval
11 of the Settlement Agreement must be filed no later than seven (7) calendar days
12 before the Fairness Hearing. This Court may order the Fairness Hearing to be
13 postponed, adjourned, or continued. If that occurs, Defendant will not be
14 required to provide additional notice to Class Members.

15
16 DATED: August 15, 2013

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18 **WILLIAM Q. HAYES**
19 United States District Judge
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